

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 13-41811
Chapter 13

John Alghanim Bonacci and Connie Delphine Bonacci,

Debtors.

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY
AND CODEBTOR RELIEF FROM STAY***

TO: Debtors and Attorney for Debtors; Kyle Carlson, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. American Honda Finance Corporation, a secured creditor of the Debtors, by its attorney, moves the court for the relief requested below, and gives notice of hearing herewith.

2. The court will hold a hearing on this motion at **2:00 pm on Thursday, June 6, 2013**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and served not later than Friday, May 31, 2013, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This motion arises under 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. American Honda Finance Corporation seeks relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 with respect to certain personal property owned by Debtors.

5. The petition commencing this Chapter 13 case was filed on April 11, 2013 and the case is now pending in this court. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. American Honda Finance Corporation holds a valid, perfected interest in a 2011 Honda Moto Cross CRF250RB Motorcycle, vehicle identification number JH2ME1030BK701302 (the "Vehicle").

7. Copies of American Honda Finance Corporation's agreement with the Debtors (the "Contract") and evidence of perfection of American Honda Finance Corporation's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. The Chapter 13 Plan requires payments to American Honda Finance Corporation. The payments are made directly by the Debtors and/or codebtor. Presently, a delinquency under the Plan exists for the months of March and April 2013 totaling at least \$352.68. American Honda Finance Corporation has not been provided with evidence of current insurance on the Vehicle.

9. The balance due under the Contract is \$5,216.94 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$5,435.00. Joseph J. Bonacci is a codebtor on the Contract.

10. The failure of the Debtors and/or codebtor to make payments pursuant to the Chapter 13 Plan or otherwise provide American Honda Finance Corporation with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling American Honda Finance Corporation to relief from the stay.

11. American Honda Finance Corporation requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

12. If testimony is necessary as to any facts relevant to this motion, John King, or some other representative of Movant, will testify on behalf of American Honda Finance Corporation.

13. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, American Honda Finance Corporation will repossess the Vehicle promptly upon the court signing the order.

14. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, American Honda Finance Corporation respectfully moves the court for an order: (i) modifying the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 so as to permit American Honda Finance Corporation to foreclose its interest in the Vehicle in accordance with nonbankruptcy law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: May 20, 2013

STEWART, ZLIMEN & JUNGERS
By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
2277 Highway 36 West, Suite 100
Roseville, MN 55113
651-366-6380 Ext. 111

MAY. 16. 2013 2:54PM

AMERICAN HONDA FINAN

NO. 8152 P. 4

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 13-41811
Chapter 13

John Alghanim Bonacci and Connie Delphine Bonacci,

Debtors.

VERIFICATION

I, John King, a Bankruptcy Specialist of American Honda Finance Corporation declare under penalty of perjury that the facts contained in the Motion are true and correct to the best of my knowledge, information and belief.

Dated: 5/16/13



John King
Bankruptcy Specialist
American Honda Finance Corporation

HONDA
Financial Services

**RETAIL INSTALLMENT CONTRACT
CONSUMER CREDIT DOCUMENT
MINNESOTA**

Contract Date: 3/19/2011 Account Number: _____

Name (Primary Buyer) BOUACCI, JOSEPH		Dealer # 103018	
Name (Buyer) BOUACCI, JOHN ALGHANIM		Name Moon Motor Sales	
Address 32694 PAMELA LANE		Address 3613 Chelsea Road West, PO Box 178	
City ST JOSEPH	State MN	Zip Code 56374	City Monticello
			State MN
			Zip Code 55362

THE VEHICLE/GOODS ARE:

YEAR	MAKE	MODEL	IDENTIFICATION NUMBER (Manufacturer's Serial or Other No.)	TYPE OF PRODUCT	KEY CODE
2011	HONDA	CRF250R	JH2HE1030BK701302	MC	

EQUIPMENT INCLUDED: ☐ Failing ☐ Saddle Bag ☐ Radio ☐ Rack

EQUIPMENT NOT SPECIFIED ABOVE:

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
17.99%	\$3559.59	\$7020.81	\$10580.40	\$10,580.40

YOUR PAYMENT SCHEDULE WILL BE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE
60	\$176.34	MONTHLY, BEGINNING 4/18/2011

PREPAYMENT: If you pay off early, you will not have to pay a penalty.
SECURITY: You are giving a Security Interest in the Vehicle/Goods being purchased.
NOTE: See the reverse side of this document for additional information about nonpayment, default, checks returned for insufficient funds, any payment in full before the scheduled date and prepayment refunds.

INSURANCE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE IS NOT INCLUDED IN THIS TRANSACTION.

FOR THE PURCHASE OF A MOTOR VEHICLE, PHYSICAL DAMAGE INSURANCE ON THE VEHICLE IS REQUIRED TO OBTAIN CREDIT. BUYER MAY OBTAIN SUCH INSURANCE FROM ANYONE CHOSEN BY BUYER ACCEPTABLE TO SELLER.

<p>INSURANCE</p> <p>Buyer voluntarily requests the credit insurance checked below, if any, and understands that such insurance is not required to obtain credit. Buyer acknowledges disclosure of the cost of such insurance and authorizes it to be included in the balance payable under this Contract.</p> <table border="1"> <tr> <th>TYPE</th> <th>PREMIUM</th> <th>TERM</th> </tr> <tr> <td>Credit Life</td> <td>\$ 0.00</td> <td>0</td> </tr> <tr> <td>Joint Life</td> <td></td> <td></td> </tr> <tr> <td>Credit Disability</td> <td></td> <td></td> </tr> <tr> <td>TOTAL PREMIUMS</td> <td>\$ 0.00</td> <td></td> </tr> </table> <p><input type="checkbox"/> Buyer wants Credit Life Insurance.</p> <p>Date _____ Primary Buyer (Signature)</p> <p>Date _____ Buyer (Signature)</p> <p><input type="checkbox"/> Buyer wants Credit Disability Insurance (Primary Buyer Only).</p> <p>Date _____ Primary Buyer (Signature)</p> <p><i>JB gmk</i></p>			TYPE	PREMIUM	TERM	Credit Life	\$ 0.00	0	Joint Life			Credit Disability			TOTAL PREMIUMS	\$ 0.00		<p>DISPOSITION OF AMOUNT FINANCED</p> <p>1. CASH PRICE</p> <p>A. Vehicle/Goods (including accessories, delivery, and installation charges) \$56,499.00 (1A)</p> <p>B. Documentation Preparation Charge \$ 775.00 (1B)</p> <p>C. Sales Tax \$ 546.81 (1C)</p> <p>D. Total Cash Sales Price (1A plus 1B plus 1C) \$57,820.81 (1D)</p> <p>2. DOWNPAYMENT</p> <p>A. Manufacturer's Rebate (if any) \$ 0.00 (2A)</p> <p>B. Cash Downpayment \$ 0.00 (2B)</p> <p>C. Total Cash Portion Of Downpayment (2A plus 2B) \$ 0.00 (2C)</p> <p>Trade-In Description/Allowance Description: Yr. _____ Make _____ Model _____ VIN _____</p> <p>D. Trade-In Allowance \$ 0.00 (2D)</p> <p>E. Amount Owed on Trade-In \$ 0.00 (2E)</p> <p>F. Net Trade-In (2D minus 2E) (Disclose as zero if negative) \$ 0.00 (2F)</p> <p>G. Amount to Finance (If 2D minus 2E is negative, see 4i below. Amount not included in 4j) \$ 0.00 (2G)</p> <p>H. Total Downpayment (2C plus 2F) \$ 0.00 (2H)</p> <p>I. TOTAL UNPAID CASH BALANCE (1D minus 2H) \$57,820.81 (3)</p> <p>4. AMOUNTS PAID TO OTHERS ON BEHALF</p> <p>A. Credit Life Premium** \$ 0.00 (4A)</p> <p>B. Credit Disability Premium** \$ 0.00 (4B)</p> <p>C. Extended Service Contract** \$ 0.00 (4C)</p> <p>D. Other** \$ 0.00 (4D)</p> <p>Official Fees</p> <p>E. Registration Fees \$ 0.00 (4E)</p> <p>F. Title/Tax Fees \$ 0.00 (4F)</p> <p>G. Other Official Fees \$ 0.00 (4G)</p> <p>H. Other Official Fees \$ 0.00 (4H)</p> <p>Other Charges</p> <p>I. Outstanding Balance on Trade-In Paid to: (see 2G above) \$ 0.00 (4I)</p> <p>J. Tax CLASSIC for Gap Waiver \$ 0.00 (4J)</p> <p>K. Tax for \$ 0.00 (4K)</p> <p>L. Total Amounts Paid On Your Behalf (4A through 4I) \$ 0.00 (4L)</p> <p>5. AMOUNT FINANCED (3 plus 4L) \$57,820.81 (5)</p> <p>**Seller may be retaining a portion of these amounts.</p>		
TYPE	PREMIUM	TERM																		
Credit Life	\$ 0.00	0																		
Joint Life																				
Credit Disability																				
TOTAL PREMIUMS	\$ 0.00																			

AGREEMENT: The undersigned Seller agrees to sell and the undersigned Buyer, jointly and severally if more than one, agrees to purchase the Vehicle/Goods described above and all equipment included, subject to the terms of this Contract.

PROMISE TO PAY: Buyer promises to pay to Seller, at the above address, or other address that may be specified, the Amount Financed shown above, plus finance charges at the Annual Percentage Rate shown above computed on the unpaid balance outstanding from time to time, plus any applicable delinquent payment and other charges provided in this Contract or otherwise provided by law. Monthly payments are due in the amount and at the times shown above; the final payment will be adjusted to reflect additional or lesser amounts due on the final payment date. The actual amount of the final payment will depend upon whether Buyer makes payments on time. Early payments will have the effect of reducing the final payment, while late payments will cause it to be higher.

ASSIGNMENT: Buyer agrees that this Contract may be assigned by the Seller. Buyer agrees that if this Contract is assigned by the Seller, the Assignee shall have all rights of the Seller under this Contract.

THE ANNUAL PERCENTAGE RATE MAY BE NEGOTIATED WITH THE SELLER. THE SELLER MAY ASSIGN THIS CONTRACT AND RETAIN ITS RIGHT TO RECEIVE A PART OF THE FINANCE CHARGE.

THERE ARE OTHER TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF WHICH ARE INCORPORATED HEREIN AND BINDING UPON YOU.

NOTICE TO THE BUYER OR CO-SIGNER

DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THE CONTRACT YOU SIGN.

BUYER: By your signature below, you acknowledge that you have read and understand both sides of this Contract, which was completely filled in prior to your execution hereof, and have received a fully executed copy thereof. You also acknowledge receipt of the Vehicle/Goods described above in good condition.

CO-SIGNER: By my signature below, I acknowledge that I have read and understand both sides of this Contract. I agree to pay the debt in this Contract although I may not personally receive any property and I understand that Seller might demand payment from me before Seller demands payment from any other person or before Seller repossesses the Vehicle/Goods. Understand that Seller may sue me for payment although the Buyer hereunder is able to pay.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

Buyer's Signature <i>Joe Bouacchi</i>	Date <u>3/19/2011</u>	Co-Signer's Signature _____	Date _____
Buyer's Signature <i>John Bouacchi</i>	Date <u>3/19/2011</u>	Co-Signer's Signature _____	Date _____

SELLER-CREDITOR

Dealer's Signature *[Signature]* Name _____ (Please Print)

Title Business Manager City/State _____ Zip Code _____

(For MC, ATV, Scooter and PE)

AMERICAN HONDA FINANCE CORPORATION

ORIGINAL

AHFC 700MM 8/04

MAR-23-2011 09:10 From:MOON MOTORSPORTS 7632955254

To:2715589

Page:2/3

UCC FINANCING STATEMENT

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
MOON MOTOR SALES INC 3613 CHELSEA RD W PO BOX 178 MONTICELLO, MN 56362

Filing Number: 201123575229
 Filing Date: 03/23/2011
 Filing Time: 9:53 am
 Processing Office: State of Minnesota
 Secretary of State
 Filed By: UCOnlineFiling

**1. DEBTOR'S EXACT FULL LEGAL NAME
INDIVIDUAL'S NAME**

Last Name BONACCI	First Name JOSEPH	Middle Name	Suffix
Mailing Address 32694 PAMELA LANE	City SAINT JOSEPH	State MN	Postal Code 56374 Country USA
Tax ID #: SSN or EIN			

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME
INDIVIDUAL'S NAME**

Last Name BONACCI	First Name JOHN	Middle Name	Suffix
Mailing Address 32694 PAMELA LANE	City SAINT JOSEPH	State MN	Postal Code 56374 Country USA
Tax ID #: SSN or EIN			

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P)

ORGANIZATION'S NAME			
AMERICAN HONDA FINANCE CORPORATION			
Mailing Address PO BOX 997503	City SACRAMENTO	State CA	Postal Code 95899 Country USA

4. This FINANCING STATEMENT covers the following collateral:
 NEW 2011 HONDA CRF250R VIN: JH2MC1G30HK701302

5. ALTERNATIVE DESIGNATION (if applicable) <input type="checkbox"/> Intervenor <input type="checkbox"/> Co-signer/Co-signer <input type="checkbox"/> Bailor/Bailor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> AG Lien <input type="checkbox"/> Non-UCC Filing	
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE) <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA:	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.13-41811

Chapter 13

John Alghanim Bonacci and Connie Delphine Bonacci,

Debtors.

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY
AND CODEBTOR RELIEF FROM STAY***

American Honda Finance Corporation submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

American Honda Finance Corporation holds a perfected interest in a 2011 Honda Moto Cross CRF250RB Motorcycle with a vehicle identification number JH2ME1030BK701302 (the "Vehicle"). The Chapter 13 Plan requires payments to American Honda Finance Corporation. The payments are made directly by the Debtors and/or codebtor. Presently, a delinquency under the Plan exists for the months of March and April 2013 totaling at least \$352.68. American Honda Finance Corporation has not been provided with evidence of current insurance on the Vehicle. The balance due under the contract is \$5,216.94 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$5,435.00. Joseph J. Bonacci is a codebtor on the Contract.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. § 362(d)(1). Here, the payments have not been made by the Debtors and/or codebtor under the Chapter 13 Plan. American Honda Finance Corporation has not been provided with evidence of current insurance on the Vehicle.

American Honda Finance Corporation does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtors fails to provide American Honda Finance Corporation with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling American Honda Finance Corporation to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

CONCLUSION

For all the reasons set forth herein, American Honda Finance Corporation is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and authorizing it to foreclose its interest in the Vehicle in accordance with nonbankruptcy law.

Respectfully Submitted,

Dated: May 20, 2013

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
2277 Highway 36 West, Suite 100
Roseville, MN 55113
651-366-6380 Ext. 111

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

John Alghanim Bonacci and Connie Delphine Bonacci

Debtors.

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 13-41811

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 2277 Highway 36 West, Suite 100, Roseville, MN 55113, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay and Codebtor Relief From Stay** upon each of the entities named below by electronic transmission or by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtors)
Robert S. Thyen
Heller & Thyen, P.A.
606 25th Ave South
Suite 110
St. Cloud, MN 56301

(Trustee)
Kyle Carlson
P.O. Box 519
Barnesville, MN 56514

(Debtors)
John Alghanim Bonacci
32694 Pamela Ln
Saint Joseph, MN 56374-9758

(CoDebtor)
Joseph J. Bonacci
32694 Pamela Ln
Saint Joseph, MN 56374-9758

Connie Delphine Bonacci
32694 Pamela Ln
Saint Joseph, MN 56374-9758

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: May 20, 2013

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 13-41811

Chapter 13

John Alghanim Bonacci and Connie Delphine Bonacci,

Debtors.

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY
AND CODEBTOR RELIEF FROM STAY***

This case is before the court on the motion of American Honda Finance Corporation seeking relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301. Based on the motion and the file,

IT IS ORDERED: The automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 is terminated as to American Honda Finance Corporation and American Honda Finance Corporation is authorized to foreclose its interest in the 2011 Honda Moto Cross CRF250RB Motorcycle, vehicle identification number JH2ME1030BK701302 in accordance with nonbankruptcy law.

Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated:

Robert J. Kressel
United States Bankruptcy Judge